

The James Zadroga 9/11 Health and Compensation Act of 2010

The United States of America does have an obligation to provide for those devastated by the tragic events of September 11, 2001. It is not unpatriotic, however, to express concerns with the specific approach of H.R. 847, the 9/11 Health and Compensation Act of 2010. This legislation:

- Creates an expansive new health care entitlement program, despite multiple existing federally-supported health care programs for 9/11 first responders and victims; and
- Re-opens the 9/11 Victims Compensation Fund (VCF), despite the fund's original intent to be temporary in nature and a recent \$815 million settlement that addressed gaps in compensation funding.

In particular, the James Zadroga 9/11 Health and Compensation Act of 2010:

- **Provides overly generous funding, failing to acknowledge existing public and private benefits and past compensation;**
- **Creates a \$3.2 billion health care entitlement;**
- **Provides an additional \$3 billion in unnecessary and duplicative compensation funds;**
- **Increases taxes through protectionist and counterproductive revenue increases.**

The Federal role should be limited to addressing real gaps in 9/11 health care needs and fulfilling broad public health goals. As our national debt nears \$14 trillion, Americans should question whether we should add \$10.4 billion in mandatory spending—not subject to annual budgeting decisions—to our already unsustainable budgetary commitments.

Provides Overly Generous Funding, Failing to Acknowledge Existing Public and Private Benefits and Past Compensation

H.R. 847 provides a total of \$10.4 billion for health care and victims' compensation funding: \$6.2 billion over the first ten years and \$4.2 billion over the second ten.

- The Victim's Compensation Fund (VCF) provides compensation for fatalities and injuries related to the attacks. The bill provides \$3 billion in the first ten years and

an additional \$3.8 billion over the second ten years. The Congressional Budget Office (CBO) has estimated payments of \$350,000 for each eligible individual.¹

- The health care provisions in this bill are capped at \$3.2 billion over the next 10 years. CBO estimates that 99,000 people will participate.
- The bill also uses a budget gimmick to make these costs appear less than they will actually be. In the 9th year, funding is cut in half (\$548 million down to \$229 million) which effectively ends any appropriations for 9/11 health purposes. Taxpayers should question whether Congress really intends to cut off anyone in treatment after the first ten years.

Significant funding has already been allocated for 9/11 victims. The specific activities in this bill have already received significant funding from the federal government:

- Approximately \$500 million has been directly allocated for health monitoring and treatment through the Centers for Disease Control and Prevention and total funding for these purposes is believed to exceed \$1 billion;²
- \$7 billion was provided through the Victims' Compensation Fund;
- \$1 billion was allocated through the World Trade Center Captive Insurance Fund that has already been tapped for the recent \$815 million settlement.³

A Rand Study from 2005 identified **\$38.1 billion** in total “quantifiable benefits” paid to compensate 9/11 victims (government and private). Insurance companies have paid out \$19.6 billion, the government paid \$15.8 billion across federal and state programs, and an additional \$2.7 billion has been donated by caring Americans.⁴

- Workers' compensation, Medicare Social Security Disability Insurance, the Medicaid program, and private health insurance (largely controlled and receiving huge subsidies from the federal government beginning in 2014) all provide benefits offered through this bill.
- The majority of VCF claims before it closed in 2004 were for death benefits— 5,562 families whose relatives were killed compared to 2,682 claimants suffering personal injuries. Now, the overwhelming majority of claims will be for compensation that duplicates these existing funding sources.
- While the bill includes a number of “collateral sources” to offset VCF awards, workers' compensation is a glaring omission. This means workers will likely “double-dip” from VCF and workers' compensation benefits.

Creates a \$3.2 billion Health Care Entitlement

This bill creates a vast new 9/11 health care bureaucracy rather than codifying the existing program at CDC. Under this bill, the CDC will have vastly expanded functions—many of which it has no expertise performing—such as negotiating provider payment rates, approving treatment protocols, establishing a competitive bidding program for prescription drugs, and evaluating the health of potential enrollees in the program.

Additionally, government health care benefits crowd-out private benefits. Private plans will have incentive to drop coverage for procedures and health care entities in which enrolled patients can receive benefits through the 9/11 program.

Medical reimbursements in the bill will be paid through a fee-for-service mechanism at an average of 140 percent of Medicare, and the benefits include no co-pays or cost-sharing from patients. This model of health care is a recipe for exploding health care costs, threatening the solvency of the program—just like Medicare only more acutely.

Finally, it will be extremely difficult for the federal government to determine which sicknesses are related to 9/11. For example, covered 9/11 conditions include: sleep apnea, substance abuse, adjustment disorder, asthma, and general anxiety disorder.

Provides \$3 billion in Unnecessary and Duplicative Compensation Funds

Twelve days after 9/11, the September 11th Victim Compensation Fund of 2001 became law. This program was intended to compensate any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the attack. The filing deadline for claims was December 22, 2003.⁵

- Of the 2,973 eligible families of dead victims, 2,880 filed claims—97 percent. The average award for families of victims killed in the attacks **exceeded \$2 million**.
- Seventy people chose to file law suits naming airlines and government agencies and thereby rejected the federal government's offer of millions of dollars in compensation. Twenty-three eligible families of dead victims took no action. These families are no longer eligible to receive compensation from the fund.
- In addition, 2,680 valid injury claims were filed and processed. The average award for injured victims was nearly **\$400,000**.
- The overall payout of the program was more than \$7 billion.

Congress also passed the Victims of Terrorism Tax Relief Act of 2001, which excluded victims' income from federal taxes for the year in which they died and also for the previous year. The law also exempted VCF awards from gross income.⁶

Finally, Congress established the World Trade Center Captive Insurance Company to indemnify New York City and construction companies against \$1 billion worth of 9-11 health related tort liability.⁷ Earlier this year, 95 percent of a group of 10,563 victims agreed to an \$815 million settlement out of the Captive Insurance Company.⁸

This bill reopens the VCF, which had processed every last claim made prior to the late 2003 deadline. It will be nearly impossible for the new administrator to determine whether new claims are a direct result of 9/11—particularly those who present in the year 2031—30 years after 9/11.

The VCF fund only paid out \$7 billion in the immediate aftermath of 9/11—primarily to the families of those who paid the ultimate sacrifice. This bill provides \$7.8 billion over the next 20 years for questionable purposes.

Increases taxes through protectionist and counterproductive revenue increases

HR 847 includes a controversial tax increase on American businesses in the name of “closing tax loopholes.” The substitute amendment circulated by Senators Gillibrand and Schumer replaces the tax increase with three separate provisions to raise new revenues. It is important to note that the bill only pays for the first 10 years of increased spending—\$6.2 billion of the \$10.4 billion.

This is another example of federal politicians demonstrating the inability to prioritize spending. Here is another bill that expands the scope of the federal government and stifles economic growth by limiting free trade, taxing tourism, and deterring legal immigration. In particular, the \$4.6 billion tax on foreign procurements that will immediately translate into lower purchasing power for our government and military.

While these poor offsets may satisfy paygo requirements in the short term, they are unlikely to provide adequate resources to covers these costs in the long term while further straining our global relationships and encouraging poor federal stewardship.

- **Excise tax on foreign manufacturers (\$4.6 billion).** This provision places a two percent excise tax on foreign manufacturers (not party to the WTO Government

Procurement Agreement (GPA)) selling to the United States government. It is unclear at this point, but it may be the vast majority of government procurements likely to be affected would be with respect to Iraq and Afghanistan, which are not full members of the WTO. While the bill sponsors attempt to prohibit companies from raising prices to offset the new fee, simple economics dictate that the result will be more expensive good and services for our government – driving costs up federal procurement costs even higher (in a war zone no less) and likely increasing our national debt in the long run.

This hastily constructed offset may also violate WTO standards. With respect to procurement obligations, the U.S. is free to differentiate its treatment between non-GPA WTO members and U.S. producers. However, with respect to an excise tax, such differentiation may conflict with the U.S.'s WTO obligations covering internal taxation for imported goods.

We are also unlikely to realize these revenues. This provision relies on current spending levels in Iraq and Afghanistan continuing for 10 years at current levels.

Finally, protectionist policies run the risk of invoking retaliatory measures from foreign governments that will further drive up the costs of American goods and services.

- **Extension of Travel Promotion Act Fees (\$1 billion):** The substitute extends and re-directs travel promotion fees created earlier this year to fund the 9/11 health programs. In short, the Travel Promotion Act, which expires in 2014, created a \$14 tax on international visitors from nations that have a US-visa waiver program. The 9/11 bill extends the collection of the \$14 fee past the 2014 sunset through FY 2021 and, beginning in FY 2015, redirects all the revenue from the fee into a fund entirely for the 9/11 bill.

Such a fee provides a disincentive for foreign tourists to come to the United States and will only serve to increase travel costs for Americans as other countries retaliate with similar fees on American tourists. As the Department of State has stated on its website:⁹

“The United States strives to eliminate visa issuance fees whenever possible; however, when a foreign government imposes such fees on U.S. citizens for certain types of visas, the United States will impose a "reciprocal" fee to nationals of that country for similar-type of visas.”

Regardless of the merits of the Travel Promotion Act, this provision will now serve as a tax on foreign travelers from friendly countries to pay for unrelated 9/11 purposes.

- **H1-B Visa Fees (\$800 million):** The bill extends until September 30, 2021 (from September 30, 2014) the Emergency Border Security Appropriations Act of 2010, passed in August, which raised fees on H1-B and L-1 visas for those companies that have more than half their U.S.-based employees on such visas.

Increasing fees on legal immigration will likely discourage an activity that provides economic benefit to the United States. As such, it is questionable whether the revenue from the H-1B and L-1 fees will actually generate as much money as predicted. As fees increase, there are likely to be fewer applications than anticipated.

The Federal Role Should Be Limited to Address Real Gaps and Fulfilling Broad Public Health Goals

If there is a real gap in coverage for real 9/11 heroes, we should authorize the existing discretionary program, appropriate the necessary funds, and continue to provide rigorous oversight to ensure effective use of the funds. Such an approach would be much more cost-effective and make far more sense than an open-ended entitlement that will cost taxpayers \$10.4 billion,

Veterans and those in the military have their programs funded through appropriations. Why should we place the non-responder residents of NYC on higher footing than our men and women in uniform?

There *is* a public health interest in providing medical monitoring and treatment to 9/11 victims. In addition to fulfilling our obligations to those who purposely put themselves in harm's way, treating exposure-related diseases helps develop best practices for related conditions with an environmental cause. As CDC develops guidelines for future disaster preparedness health precautions, the lessons learned from 9/11 will prove invaluable to the federal government.

The federal government does not, however, have an obligation to provide for overly-generous, questionably-related, and fiscally-irresponsible benefits with a price-tag of \$10.4 billion.

¹ Congressional Budget Office, Letter to Congressman Spratt, September 27, 2008, <http://www.cbo.gov/ftpdocs/98xx/doc9825/hr7174.pdf>.

² Author calculations of appropriations history.

³ Public Law 108-7, Government Printing Office, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:hj2enr.txt.pdf.

⁴ Rand Institute for Civil Justice, "Compensating the Victims of 9/11," 2005, available http://www.rand.org/content/dam/rand/pubs/research_briefs/2005/RAND_RB9087.pdf.

⁵ Department of Justice, September 11th Victims Compensation Fund, <http://www.justice.gov/archive/victimcompensation/>

⁶ Government Printing Office, Victims of Terrorism Tax Relief Act of 2001, <http://www.gpo.gov/fdsys/pkg/BILLS-107hr2884eah/pdf/BILLS-107hr2884eah.pdf>.

⁷ Public Law 108-7, Government Printing Office, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:hj2enr.txt.pdf.

⁸ Chad Bray, "9/11 Health Deal Gets OK," Wall Street Journal, November 20, 2010, <http://online.wsj.com/article/SB10001424052748704170404575624812837921090.html>.

⁹ The Department of State website, http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html, accessed June 2009 and <http://shenyang.usembassy-china.org.cn/visa/fee2.html>, accessed December 2010.